

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KEISHA CAPPEL, ALFONSO JONES, THE ESTATE OF TAMIKA JONES	:	CIVIL ACTION
	:	
	:	
v.	:	NO. 23-155
	:	
ASTON TOWNSHIP FIRE	:	
DEPARTMENT, TOWNSHIP OF	:	
ASTON, PROSPECT CROZER, LLC,	:	
PROSPECT CCMC, LLC, CHIEF	:	
MICHAEL EVANS, EOIN	:	
MARSHALL, AARON KISELA	:	

ORDER

AND NOW, this 19th day of September 2023, upon considering defendants' pending motions to dismiss (DI 34, 39) and plaintiffs' responses (DI 43, 44), as well as plaintiffs' motion for leave to file a second amended complaint (DI 50), defendants' responses (DI 54-57), and plaintiffs' reply (DI 59), it is **ORDERED** as follows:

1. Plaintiffs' motion for leave to file a second amended complaint (DI 50) is **GRANTED**.

2. Defendants' motions to dismiss (DI 34, 39) are **GRANTED IN PART** and **DENIED IN PART** as follows:

- Defendants' motions are granted *without* prejudice with respect to Count I (Fourteenth Amendment), Count II (*Monell*), and Count III (supervisory liability) of plaintiffs' second amended complaint.
- We reject defendants' arguments with respect to dismissal of Count IV (ADA) and Count V (Rehabilitation Act) of plaintiffs' second amended complaint. Both causes of action will proceed to discovery.
- Defendants' motions are granted *with* prejudice with respect to Count VI (gross negligence/reckless misconduct) and Count VII (gross negligence/lost chance) of plaintiffs' second amended complaint.
- Defendants' motions are granted in part and denied in part with respect to Count

VII (intentional/negligent infliction of emotional distress) of plaintiffs' complaint. Only the intentional infliction of emotional distress claims against the individual members of the Aston Township Fire Committee, Eoin Marshall, Aaron Kisela, Michael Evans, and a "John Doe" medical director will move to discovery.

- Defendants' motions are granted and part and denied in part with respect to Count IX (wrongful death) and Count X (survival action) of plaintiffs' complaint. Counts IX and X will proceed to discovery only to the extent they are predicated on plaintiffs' ADA, Rehabilitation Act, and intentional infliction of emotional distress claims.



MURPHY, J.